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Supreme Court of the United States

OCTOBER TERM, 1980

No. 80-262

NORMAN F. DACEY,

Petitioner,

v.

JOHN P. COTTER, JOSEPH W. BOGDANSKI, ALVA P. LOISELLE, JOSEPH S. LONGO and ELLEN A. PETERS,

Respondents,

and

NORMAN F. DACEY,

Petitioner,

v.

HENRY J. NARUK,

Respondent.

ON PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF OF RESPONDENTS, JOHN P. COTTER, JOSEPH W. BOGDANSKI, ALVA P. LOISELLE, JOSEPH S. LONGO, ELLEN A. PETERS AND HENRY J. NARUK IN OPPOSITION

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QUESTIONS PRESENTED FOR REVIEW

1. Where an unsuccessful plaintiff in a state court action, while his appeal is pending, sues the Presiding Judge in a *pro se* federal civil rights action, demanding damages and injunctions for refusal to recuse himself and other alleged errors, and the United States Court of Appeals affirms dismissal by the United States District Court for lack of jurisdiction, are there any special and important reasons for granting a petition for certiorari by the United States Supreme Court?

2. Where that plaintiff, while the same state appeal is pending, also sues the Justices of the State Supreme Court in another *pro se* federal civil rights action for their refusal to recuse themselves, demanding in effect a mandatory injunction prohibiting their hearing his appeal, and the United States Court of Appeals affirms dismissal by the United States District Court for lack of jurisdiction, are there any special and important reasons for granting a petition for certiorari by the United States Supreme Court?

STATEMENT OF THE CASE

A. *DACEY v. NARUK*

This petition involves a *pro se* action purportedly brought under the Civil Rights Act, 42 U.S.C. §§ 1983 and 1985, as well as the Sherman Anti-Trust Act of 1890, 15 U.S.C. §§ 1, *et seq.* It results from a proceeding in the Superior Court of the State of Connecticut in which the plaintiff-petitioner was unsuccessful. The sole defendant was a state court judge. The suit demanded $500,000 compensatory damages, $500,000 punitive damages, treble damages for alleged anti-trust violations, an order that the judgment in the state court be "quashed" by the federal district court, an order enjoining the state judge from enforcing the state judgment, and the assignment by the federal district court of the state action for retrial in the State Superior Court. In addition, plaintiff made a criminal charge against the state judge and petitioned the federal district court to refer that charge to a grand jury. Various other sundry relief was also requested. Plaintiff's Amended Verified Complaint, R. Doc. No. 22, pp. 13-14.

Before discussing this action further, it would be helpful to summarize previous litigation related to this case from which the present matter arose.

Prior State Supreme Court Decision.

The basic facts may be gleaned from a prior decision of the State Supreme Court, *Norman F. Dacey v. Connecticut Bar Association*, 170 Conn. 520, 368 A.2d 125 (1976), together with the Record in that case contained in A-607, Connecticut Supreme Court Records And Briefs, Part 1, (December Term, 1975).

Mr. Dacey is the author of a book entitled "*How To Avoid Probate!*" Subsequent to the publication of this book, the

Connecticut Bar Association published a pamphlet entitled "*Understanding Probate! Or Don't Be Dead-Wrong!*" Mr. Dacey then brought an action for libel against the Bar Association based upon statements contained in that pamphlet. He obtained a jury award of Sixty Thousand Dollars ($60,000) in general damages in addition to exemplary damages of $7,887.50 in the Superior Court for Fairfield County. An appeal from this verdict and judgment was taken by the Bar Association to the State Supreme Court.

On October 24, 1974, counsel for both parties in that case were notified by the Reporter of Judicial Decisions as follows:

> "The Chief Justice further requested that I bring to your attention the fact that all justices of the Supreme Court are members of The Connecticut Bar Association and to inquire if either of you intends to raise this issue as a possible bar to their hearing the appeal."
>
> Appendix to plaintiff's State Supreme Court Brief, pp. 15a-16a, contained in *Records And Briefs, supra.*

Mr. Dacey then moved on or about November 3, 1974, that the Justices of the Supreme Court disqualify themselves from hearing the appeal. The motion was denied on November 12, 1974.

The Board of Governors of the Connecticut Bar Association then adopted a resolution on January 20, 1975, providing in essence that the dues of any Superior Court Judge and Supreme Court Justice who participated in any stage in the *Dacey* case would be suspended in an amount equal to the pro rata share owed by each member of the Bar Association for satisfaction of any money judgment in favor of the plaintiff. (Appendix to plaintiff's State Supreme Court Brief, pp. 16a-17a, contained in *Records And Briefs, supra.)*

It is also noted that the pro rata share of each member for the amount of the verdict, exemplary damages and interest as

of November 1, 1975 was calculated at approximately $16.33. (Appendix to defendant's State Supreme Court Reply Brief, p. 1a, contained in *Records And Briefs, supra.*)

As the State Supreme Court pointed out in its opinion, a full appellate court could not be formed from among the total membership of that court as well as the Superior Court (the trial court of general jurisdiction) if members of the Connecticut Bar Association were to be excluded. *Dacey v. Connecticut Bar Association, supra,* 170 Conn. at 524.

The State Supreme Court also indicated that apart from the resolution of the Bar Association which would have avoided any contribution by the justices in payment of the judgment, the pecuniary interest of each member of the Court was *de minimus*. It was comparable to that of a judge who presided in a tax appeal involving a town in which he was a taxpayer. *Id.*, at 523-4.

Accordingly, the State Supreme Court heard the appeal and held that the evidence in the lower court was required to prove actual malice with "convincing clarity" pursuant to *New York Times Co. v. Sullivan,* 376 U.S. 254, 285-286 (1964) and other U. S Supreme Court decisions dealing with First Amendment considerations where a public figure is the subject of criticism.[1] The judgment was set aside due to the refusal of the Superior Court judge to charge the jury to this effect, and a new trial was ordered. The State Supreme Court's decision was released on April 6, 1976.

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[1]It was stipulated in the State Superior Court that plaintiff, whose book, "*How To Avoid Probate!*" had sold nearly one million copies up to that time, was a public figure. Appendix to defendant's State Supreme Court brief, p. 1a, 37a, contained in *Records And Briefs, supra.*

Prior Federal Court Suits.

No petition for certiorari was filed or other form of review by the U. S. Supreme Court sought in respect to the State Supreme Court ruling. Instead, plaintiff-petitioner sued the Justices of the State Supreme Court in the United States District Court under 42 U.S.C. § 1983. The action was dismissed on the basis of judicial immunity on February 16, 1977. *Norman F. Dacey v. Charles S. House, et al., Ruling On Defendants' Motion To Dismiss*, U.S.D.C., D.Conn., Civ. No. B-76-146. The dismissal was affirmed. *Dacey v. House*, 573 F.2d 1289 (2d Cir., 1977), *cert. den.*, 436 U.S. 906 (1978).

In addition, plaintiff-petitioner sued the U. S. Attorney for the District of Connecticut for failing to bring criminal charges against the State Supreme Court. This suit was also dismissed on February 16, 1977. *Norman F. Dacey v. Peter C. Dorsey, Ruling On Defendant's Motion To Dismiss*, U.S.D.C., D.Conn., Civ. No. B-76-190. In affirming the dismissal, the United States Court of Appeals found that the refusal of the State Supreme Court Justices to disqualify themselves did not constitute a conspiracy to violate Dacey's civil rights under 42 U.S.C. § 1985. Therefore, the Court ruled, failure to prosecute did not constitute a violation under 42 U.S.C. § 1986. *Dacey v. Dorsey*, 568 F.2d 275 (2d Cir., 1978), *cert. den.* 436 U.S. 906 (1978).

New Trial Of *Dacey v. The Connecticut Bar Association.*

Following the Supreme Court's judgment of April 6, 1976, finding error and ordering a new trial in *Dacey v. The Connecticut Bar Association*, the second trial commenced on May 26, 1977 in the State Superior Court for Fairfield County before the Honorable Henry J. Naruk, defendant-respondent. (Complaint, R. Doc. No. 1, ¶ A(5)). After the evidence had been

submitted, the Court committed the action to the jury, rendered a verdict, finding the issues in favor of the defendant bar association.[2]

The Court accepted the verdict and the plaintiff then filed a motion that the verdict be set aside. Before the hearing on the motion, plaintiff-petitioner filed a *pro se* appearance in lieu of the appearance of his attorney. Judge Naruk, before proceeding further, cautioned Mr. Dacey that by discharging his counsel, Dacey might be at a disadvantage in two respects: first, that he lacked legal training, and secondly, that he had not tried the case. Tr., pp. 4-5.[3] Mr. Dacey stated that he had considered these factors and was aware of these disadvantages. Tr., p. 5. Judge Naruk then ruled that Mr. Dacey's former attorney could withdraw from the case. *Id.* Mr. Dacey claimed in his argument that the bar association resolution did not exempt judges from paying their pro rata share of costs and legal fees as distinguished from damages. However, Judge Naruk interpreted the resolution as indicating "that there would be no monetary effect on my membership dues to the Connecticut Bar Association by virtue of the fact that I sat on this case . . . ." Tr., p. 42. Judge Naruk also noted that, in any event, his interest was *de minimus*.

Judge Naruk also observed that Judge Burns, who was not a member of the Connecticut Bar Association, was not sitting in the county at the time of trial. Tr., p. 36. Although reference was made to another judge who also was a nonmember of the bar association, there was no evidence presented by Mr. Dacey at the hearing on his motion to set aside the verdict that she was

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[2]Appellate record in *Dacey v. Connecticut Bar Association, supra*, No. 8716, p. 12, on file with the Clerk of the State Supreme Court

[3]References to the transcript are to that of the hearing on the motion to set aside the verdict, June 16, 1977, contained in the appendix to the Appellant's brief in the Court of Appeals.

available for trial.[4] Nor was such evidence offered in the federal suits which followed. A check had been made as to other judges who had been mentioned earlier in the case and it had been found that all belonged to the bar association. Tr., p. 35. Apart from these considerations, the fact of Judge Naruk's bar membership was never communicated to the jury in order not to prejudice its determination. Tr., p. 39.

Mr. Dacey has also made the claim that Judge Naruk refused to allow him to present "important evidence" and that a certain exhibit "had been tampered with." Petition, p. 15. This matter concerned a copy of Mr. Dacey's book, "*How To Avoid Probate!*" However, Judge Naruk stated at the hearing, in response to Mr. Dacey's contentions:

> "THE COURT: The same book that was marked as your exhibit, Plaintiff's Exhibit A, is the same book that was later marked Defendant's Exhibit 1 and is the one that went to the jury and it's part of the Court record that was never changed and it has both labels on it.
>
> MR. DACEY: Was there two books submitted to the jury, your Honor?
>
> THE COURT: No, there was a book before it was marked that Mr. Laros had, and the problem was that both Mr. Laros's [Dacey's original counsel] and Mr. Peck's [defendant's counsel] copy had been marked up and they were looking for a clean copy

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[4]The letter of the Chief Court Administrator of March 17, 1977, referring to other judges who were not members of the Connecticut Bar Association, contained in the appendix to the Petition, p. B-1, was dated over two months prior to the commencement of the trial. Whether another judge would in fact be available at that time could only be determined by the county administrative judge to whom a copy of this letter was sent.

that didn't have notes or underlinings under it. And Mr. Peck then produced another copy which Mr. Laros examined and which he then had marked as your exhibit. It was marked as your exhibit.

MR. PECK: That is correct.

THE COURT: Not as a defendant's exhibit."

Tr., p. 23.

It should be pointed out that the exhibit which was marked was evidently a later edition of Mr. Dacey's book and contained a statement that the New York Court of Appeals in separate litigation had permitted the book to be distributed in that state and had stated that the public was not exploited by it. This statement had evidently not been printed in the earlier edition that had been admitted into evidence. Mr. Dacey claimed that it was contained in the later edition. It was the later edition, as previously stated, that was not marked as an exhibit because of the handwritten notations which it contained.

Judge Naruk noted that when the book had been offered in evidence, both Mr. Dacey and his counsel had looked at it and had evidently conferred about it. Tr., p. 20. Furthermore, the Court also observed that the issue as to "substitution" had never been raised until Mr. Dacey's argument on his motion to set aside the verdict. Mr. Dacey admitted that that was correct. Tr., p. 24.

Moreover, Judge Naruk also observed that even if it had been raised earlier, the statement in question "would be a self-serving declaration and upon the proper motion of counsel, would be stricken out." Tr., p. 40.

In addition, Dacey's representation in his Petition (p. 15) that the Court refused to allow him to introduce this evidence is

incorrect. Judge Naruk repeatedly gave Mr. Dacey an opportunity to offer the exhibit at the hearing on the motion to set aside the verdict. The Court stated that it wished to give him an opportunity to show any alleged deviations for the benefit of the record and the State Supreme Court in the event of appeal. Tr., pp. 32-35. Mr. Dacey finally submitted a copy of the book to the Court and it was marked as a full exhibit, Plaintiff's Exhibit AA. Tr., pp. 34-35.

Judge Naruk also noted that it was not customary to give a verbal explanation of his decision on a motion to set aside the verdict. He, nevertheless, proceeded to do so because Mr. Dacey as a member of the public was entitled to know how the case was decided. No useful purpose would be served by detailing the attacks which Mr. Dacey made on the fairness of the Court in its presence. For example, "MR. DACEY: I can only say collectively you make a travesty of justice." Tr., p. 43. Mr. Dacey stated, however, that he agreed that the Court never abused him throughout the trial. Tr., p. 44.

The Court denied the motion to set aside the verdict and judgment for the defendant was entered, dated June 2, 1977. Dacey filed an appeal *pro se* to the State Supreme Court on July 5, 1977, based upon the recusal issue and the allegation that the defendant bar association "had tampered with the evidence."[5]

Present Federal Suit.

While the appeal was pending, plaintiff-petitioner filed his Complaint in the United States District Court on August 22, 1977, based primarily upon Judge Naruk's refusal to recuse himself. It was dismissed *sua sponte* by the Honorable Jon O. Newman, United States District Judge, on September 22, 1977, based upon judicial immunity, notwithstanding Dacey's claim

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[5]Record of Appeal in No. 8716, *supra*, p. 13.

that he was not suing the defendant judge " 'as such' " but instead as an individual " 'sitting in judgment.' " Ruling, R., Doc. No. 12, pp. 1 and 2.

Plaintiff-petitioner filed a motion to alter or amend judgment on September 28, 1977, as well as a motion for leave to amend pleading because it was claimed that he had "inadvertently omitted from his Complaint a legally-significant request for relief." R., Docs. Nos. 14 and 16.

On November 21, 1977 Judge Newman again dismissed the case, (Order, R., Doc. No. 21) stating:

> "Another claim seeks assignment of the plaintiff's state court action against the Connecticut Bar Association for retrial in the state courts. This Court has no appellate jurisdiction over the state courts and no jurisdiction to order such a retrial. Finally, plaintiff seeks an order that the judgment in his state court action against the Connecticut Bar Association be 'quashed' and that the defendant state court judge be enjoined from enforcing that judgment. Such a claim is a transparent attempt to have this Court exercise a non-existent appellate function with regard to the state court proceedings." *Id.*, pp. 1-2.

The Court permitted plaintiff-petitioner to file his amended complaint, denied the motion to alter or amend judgment, and to ensure that plaintiff had not inadvertently allowed his federal appellate rights to be defeated, directed the Clerk to enter an additional judgment dismissing the action.

Plaintiff-petitioner filed a notice of appeal to the United States Court of Appeals for the Second Circuit on November 30, 1977. R., Doc. No. 24. Five days later he filed a motion for

relief from the second judgment and also sought permission to file an affidavit of prejudice in respect to Judge Newman. R., Doc. No. 25.

On January 16, 1978 plaintiff filed an unsworn document entitled "Plaintiff's Affidavit of Prejudice Filed Pursuant to Title 28, Section 144." Dacey requested that the federal judge recuse himself and vacate orders previously entered on the ground that Judge Newman was also a member of the Connecticut Bar Association.

The Court in its Ruling filed January 31, 1978 stated that it was extremely doubtful that this fact afforded any legal basis for disqualification because the claim against Judge Newman would not be satisfied by Bar Association funds. The Court further continued:

> "... However, there are occasional situations where even though recusal is not required, it may be appropriate to eliminate even the slightest question concerning the impartiality of a judge. Since this litigation is alleged to concern a member of the judiciary, it may be appropriate, even in the absence of legally valid grounds for disqualification, to make sure that the judge deciding this case is one against whom plaintiff can make no complaint whatever...."

Judge Newman, therefore, stated that if the Court of Appeals deemed it appropriate to remand the case, he was willing to vacate his prior orders and ask the Chief District Judge to reassign the matter to a visiting judge from within the Second Circuit who was not a member of the Connecticut Bar Association. R., Doc. No. 28, p. 3.

The parties stipulated that the case could be remanded for the purpose of reassignment to a visiting judge. A remand was so ordered by the U. S. Court of Appeals on or about April 6,

1978. On May 2, 1978, Judge Newman vacated his previous orders and instructed the Clerk to forward the file to the Chief Judge for reassignment. Chief Judge Clarie thereupon reassigned the case to Judge Thomas Murphy, a visiting judge from the Second Circuit for all purposes.

On March 13, 1979 Judge Murphy granted the defendant's motion to dismiss and entered a memorandum to this effect. Plaintiff thereupon filed a motion to alter or amend the judgment which was not granted. His notice of appeal to the Second Circuit was filed on July 27, 1979.

Court Of Appeals Proceeding.

After the case had been assigned for oral argument, plaintiff-petitioner filed a "MOTION FOR LEAVE TO FILE A PETITION FOR THE ISSUANCE OF A WRIT OF MANDAMUS," dated February 13, 1980, in the U. S Supreme Court. The mandamus was sought against the U. S. Court of Appeals for the Second Circuit because its allotment to Mr. Dacey of two and one-half minutes for argument of each of his cases was allegedly insufficient.[6] The motion was denied on March 24, 1980. *Norman F. Dacey v. Henry J. Naruk, et al.*, No. 79-1300, U. S. , 100 S.Ct. 1346 (1980).

The U.S. Court of Appeals affirmed the judgment of the District Court on March 3, 1980,[7] on the basis of lack of jurisdiction to award the relief requested. The Court cited the *Younger* doctrine[8] against federal interference in state court proceedings, as well as the failure to state a claim cognizable in

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[6]The other case was *Norman F. Dacey v. John P. Cotter, et al.*, a companion appeal which will be discussed subsequently.

[7]*Dacey v. Naruk*, 622 F.2d 573 (2d Cir., 1980).

[8]*Younger v. Harris*, 401 U.S. 37, 46 (1971).

the federal courts to begin with. The Court referred to the prior *Dacey* litigation in which a petition for a writ of certiorari was denied by the U. S. Supreme Court.[9]

Dacey filed a petition for rehearing containing a suggestion that the action be reheard *en banc*. The petition for rehearing and the *en banc* request were denied on May 13, 1980.

After the Court of Appeals affirmed the District Court judgments, Mr. Dacey, on March 18, 1980, sent an *ex parte* letter to Judge Timbers asking:

> "Will you be kind enough to confirm to me in writing the fact that you are not now nor have you at any time in the past been a member of the Defendant Connecticut Bar Association?"

On March 27, 1980, the Clerk of the Court of Appeals advised Mr. Dacey that Judge Timbers had stated that it was improper for a litigant to address *ex parte* communications to one member of a panel without sending copies to other members of the panel, and, further, that is was improper to address communications to the Court without sending copies to opposing counsel. The Clerk also stated that any request for recusal should have been made in proper form before the argument and not after the dates of argument as well as decision. The Clerk also stated that Judge Timbers "is not a member of the Connecticut Bar Association." Subsequently, Mr. Dacey claimed that Judge Timbers had been a former member of the Connecticut Bar Association. On May 28, 1980 Mr. Dacey was informed by the Judicial Council of the Second Circuit that the Court had considered his complaint under Section 0.24 (a) of the rules of the Court and that the matter had been rejected under Section A of that rule. No point would be served in describing further correspondence which Mr. Dacey sent in reply to that letter or other communications on his part on this matter.

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[9]*Dacey v. Dorsey*, 568 F.2d 275 (2d Cir., 1978), *cert. den.* 436 U.S. 906 (1978).

B. *NORMAN F. DACEY v. JOHN P. COTTER, ET AL*

On August 18, 1979, Mr. Dacey filed a Complaint against the Justices of the Supreme Court of the State of Connecticut pursuant to 42 U.S.C. §§ 1983 and 1985, as well as 18 U.S.C. § 242, the criminal provisions relating to civil rights. He alleged that in the appeal which he had taken to the State Supreme Court from the judgment rendered by Judge Naruk, previously discussed, he had moved for disqualification of any Justice who was or had been a member of the Connecticut Bar Association. He stated in his Complaint that he had asked the State Supreme Court to pursue one of several courses in the event there were an insufficient number of qualified Justices to hear his appeal. The U. S. Supreme Court should be requested to hear the appeal in lieu of the Connecticut Supreme Court, or the Supreme Courts of Massachusetts or Rhode Island, or the New York Court of Appeals should be requested to consider the appeal, Mr. Dacey maintained. Other supposed remedies were also proposed. He further alleged that the State Supreme Court had denied his motion for recusal. Mr. Dacey requested that the federal court grant "An injunction requiring the Defendants to halt immediately their violation of the Plaintiff's civil rights; . . ." R., Doc. No. 1, p. 10.

Judge Burns dismissed the action on October 5, 1979 for lack of subject matter jurisdiction. R., Doc. No. 14. She stated that the suit was in effect a request that the U.S. District Court review the decision of the Connecticut Supreme Court on the motion for recusal. She referred to Judge Newman's previous Ruling in *Dacey v. Naruk, supra.* Dacey's request for relief in the federal court was

> ". . . 'a transparant attempt to have this Court exercise a non-existent appellate function with regard to the state court proceedings.' . . ."

Id., p. 3.

Dacey subsequently filed a Motion to Alter, Amend or Set Aside the Judgment on November 18, 1979. R., Doc. No. 16. The motion was endorsed as denied on November 15, 1979.

Mr. Dacey's appeal to the Second Circuit in this case was consolidated with *Dacey v. Naruk, supra.* The same decision rendered in the *Naruk* case was also issued in the *Cotter* action.

We have set forth these proceedings in detail to facilitate an understanding of the events in the lower courts as they actually occurred.

ARGUMENT

A.

Damage Claim Barred.

Plaintiff in his appeal to the Second Circuit in *Dacey v. Naruk* eliminated his demand for money damages. In his civil appeal pre-argument statement, Mr. Dacey responded to the question of the amount of damages sought by stating "none." No money damages were sought in *Dacey v. Cotter, et al.* Even apart from Mr. Dacey's waiver of damages against Judge Naruk, it is well established that such a claim would be barred by the principle of judicial immunity. *Stump, et al. v. Sparkman,* 435 U.S. 349 (1978). In *Pierson v. Ray,* 386 U.S. 547 (1967), cited by the Court in *Stump, et al. v. Sparkman, supra,* it was held that:

> " '. . . It is a judge's duty to decide all cases within his jurisdiction that are brought before him, including controversial cases that arouse the most intense feelings in the litigants. His errors may be corrected on appeal, but he should not have to fear that unsatisfied litigants may hound him with litigation charging malice or corruption. Imposing such a burden on

judges would contribute not to principled and fearless decision-making but to intimidation.' "

Id., at 554.

Accord, Bradley v. Fisher, 80 U.S. (13 Wall.) 335 at 347 (1872). *See also: Imbler v. Pachtman*, 424 U.S. 409, 418, 422-23, n. 20 at 423 (1976).

B.

Petition Seeks To Have Federal District Court Exercise Appellate Powers Over State Court Proceedings.

As both Judges Newman and Burns observed, Dacey was improperly seeking to have the District Court " 'exercise a non-existent appellate function with regard to the state court proceedings.' " Memorandum Of Decision, *Dacey v. Cotter, et al.*, R., Doc. No. 14, p. 3.

In *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923), the Supreme Court considered the question that is before this Court: whether a federal district court should hear a proceeding to overturn the judgment of a state court on constitutional grounds. The question was answered in the negative:

". . . If the constitutional questions stated in the bill actually arose in the cause, it was the province and duty of the state courts to decide them; and their decision, whether right or wrong, was an exercise of jurisdiction. If the decision was wrong, that did not make the judgment void, but merely left it open to reversal or modification in an appropriate and timely appellate proceeding. Unless and until so reversed or modified, it would be an effective and conclusive adjudication. [Citations omitted]. Under the legislation of Congress, no court of the United States other

> than this Court could entertain a proceeding to reverse or modify the judgment for errors of that character. [Citing statute]. To do so would be an exercise of appellate jurisdiction. The jurisdiction possessed by the District Courts is strictly original."
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> 263 U.S., at 415-16.

In *Rooker, supra,* as in this case, there was an allegation that a state judge had a pecuniary interest in the case, and should have been disqualified. The Supreme Court stated,

> "Certainly the charge does not change the nature of the bill [in equity] or require that it be given any effect which it otherwise would not have."
>
> 263 U.S., at 417.

Although *Rooker, supra,* was a bill in equity to nullify a judgment of the Circuit Court of Indiana, its teaching has been applied to actions brought pursuant to 42 U.S.C. § 1983. In *Anderson v. Lecon Properties, Inc.*, 457 F.2d 929, 930 (8th Cir., 1972), *cert. den.* 409 U.S. 879 (1972), the Court held:

> ". . . To the extent that there was any error of constitutional magnitude in the Minnesota Supreme Court's decision, plaintiffs' sole recourse was to the Supreme Court of the United States. Federal courts of inferior jurisdiction have no jurisdiction to review alleged errors in state court judgments. Rooker v. Fidelity Trust Co., 263 U.S. 413, 44 S.Ct. 149, 68 L.Ed. 362 (1923); Evanson v. Northwest Holding Company, 368 F.2d 531 (8th Cir., 1966) . . . ."

The *Rooker* doctrine, as amplified in *Anderson, supra,* has been followed in other decisions. In *Tang v. Appellate Division,* 487 F.2d 138, 141 (2d Cir., 1973), *cert. den.* 416 U.S. 906

(1974), the Court stated, with regard to a litigant's attempt to have a federal court review a state court's constitutional ruling:

> "The district court lacks jurisdiction to review state court determinations of federal constitutional questions and on that ground we affirm the dismissal of the action. Rooker v. Fidelity Trust Co. 263 U.S. 413, 44 S.Ct. 149, 68 L.Ed. 362 (1923)."
>
> *See also: Roy v. Jones*, 484 F.2d 96, 99 (3d Cir., 1973); *Paul v. Dade County*, 419 F.2d 10, 12-13 (5th Cir., 1969), *cert. den.* 397 U.S. 1065 (1970); Lampkin-Asam v. Supreme Court of Florida, 601 F.2d 760 (5th Cir., 1979), *cert. den.* 444 U.S. 1013 (1980); *Mitchell v. National Broadcasting Co.*, 553 F.2d 265 (2d Cir., 1977). *Cf. also: Ellentuck v. Klein*, 570 F.2d 414, 425, n. 18, (2d Cir., 1978).

C.

Petition Seeks to Contravene Well Established Principles Of Federalism, Comity and Equity.

Although the state court proceedings in this case are of a civil and not a criminal nature, it would appear that important state interests are involved when rulings of state court judges are sought to be overturned by collateral attack. As this Court recognized in *Huffman v. Pursue, Ltd.*, 420 U.S. 592 (1975),

> "Federal post-trial intervention, in a fashion designed to annul the results of a state trial, also deprives the States of a function which quite legitimately is left to them, that of overseeing trial court dispositions of constitutional issues which arise in civil litigation over which they have jurisdiction. We think this consideration to be of some importance because it is typically a judicial system's appellate courts which are by their nature a litigant's most

> appropriate forum for the resolution of constitutional contentions . . . . In short, we do not believe that a State's judicial system would be fairly accorded the opportunity to resolve federal issues arising in its courts if a federal district court were permitted to substitute itself for the State's appellate courts. We therefore hold that *Younger* standards must be met to justify federal intervention in a state judicial proceeding as to which a losing litigant has not exhausted his state appellate remedies."

Id., at 609.

This brings us to what Justice Black described as " 'Our Federalism' " in *Younger v. Harris*, 401 U.S. 37, 44-5 (1971). In that case, speaking for the Court, he stated:

> ". . . [O]ne familiar with the profound debates that ushered our Federal Constitution into existence is bound to respect those who remain loyal to the ideals and dreams of 'Our Federalism.' The concept does not mean blind deference to 'States' Rights' any more than it means centralization of control over every important issue in our National Government and its courts. The Framers rejected both these courses. What the concept does represent is a system in which there is sensitivity to the legitimate interests of both State and National Governments, and in which the National Government, anxious though it may be to vindicate and protect federal rights and federal interests, always endeavors to do so in ways that will not unduly interfere with the legitimate activities of the States. It should never be forgotten that this slogan, 'Our Federalism,' born in the early struggling days of our Union of States, occupies a highly important place in our Nation's history and its future."

See also: Moore v. Sims, 442 U.S. 415 (1979); *Juidice v. Vail*, 430 U.S. 327 (1977); *Trainor v. Hernandez*, 431 U.S. 434 (1977); *Mitchum v. Foster*, 407 U.S. 225, 243 (1972); *Atlantic Coast Line R.R. v. Brotherhood of Locomotive Engineers*, 398 U.S. 281, 286 (1970). *Cf. also Rizzo v. Goode*, 423 U.S. 362, 378-380 (1976).

It should further be noted that collateral attack and relitigation of a state court judgment at this point raises serious questions, to say the very least, by reason of "the normal rules of res judicata and judicial estoppel." *Huffman v. Pursue, Ltd., supra*, at 60, n. 18. *Cf. also Preiser v. Rodriguez*, 411 U.S. 475 (1973), wherein the Court noted that "*res judicata* has been held to be fully applicable to a civil rights action brought under § 1983. [citations omitted]" *Id.* at 497.

D.

Other Considerations.

As a matter of general background, the Connecticut Supreme Court, in its previous decision in *Norman F. Dacey v. Connecticut Bar Association*, 170 Conn. 520, 368 A.2d 125 (1976), provided the following reasons for its refusal to disqualify itself, which would also appear to apply to the present proceedings:

> "A challenge on the basis of disqualification of a judge or justice is not one which can be considered lightly. This state early has taken the view that any judge having an interest in a pending case should disqualify himself from hearing the case. *Wood v. Hartford Fire Ins. Co.*, 13 Conn. 202, 211; see also *Nettleton's Appeal*, 28 Conn. 268; *Cabot Bank's Appeal*, 26 Conn. 7.
>
> In the event that the plaintiff should prevail in this appeal, the defendant has voted that the dues of each

justice would be reduced so that none of the justices would contribute to the payment of the judgment. Whether this is done or not, the pecuniary interest of each justice is de minimus and is comparable to the interest of the judge that determines the tax appeal of a litigant against a town where a judge is a taxpayer. We fail to see any conflict concerning the nonfinancial interests. Furthermore, it has been held that membership in a bar association or integrated bar is not a basis for disqualification in a case which a bar association is a party. *Minnesota State Bar Assn. v. Divorce Education Associates*, 300 Minn. 323, 219 N.W. 2d 920, cert. denied, sub nom. *Thibodeau v. Minnesota State Bar Assn.*, 419 U.S. 1023, 95 S.Ct. 500, 42 L.Ed. 2d 297; *In re Rhodes*, 370 F.2d 411, cert. denied, 386 U.S. 999, 87 S.Ct. 1321, 18 L.Ed. 2d 349; see 46 Am. Jur. 2d, Judges, § 121."

* * * * * *

"Article fifth, § 1, of the state constitution vests the judicial power of the state in the courts. The Supreme Court exercises appellate jurisdiction as defined by law. This judicial responsibility is an attribute to sovereignty. There is a limitation upon the right or duty of judges to disqualify themselves. 'Disqualification must yield to necessity where to disqualify would destroy the only tribunal in which relief could be had and thus preclude determination of the issue. In such case it has been held, consistently, the court must act no matter how disagreeable its task may be.' *New Jersey State Bar Assn. v. New Jersey Assn. of Realtor Boards*, 118 N.J. Super. 203, 209, 287 A.2d 14; see *Evans v. Gore*, 253 U.S. 245, 247-48, 40 S.Ct. 550, 64 L.Ed. 887; *Moulton v. Byrd*, 224 Ala. 403, 405, 140 So. 384; *Federal Construction Co. v. Curd*, 179 Cal. 489, 493-94, 177 P. 469; *Wheeler v. Board of*

Trustees, 200 Ga. 323, 326-28, 37 S.E. 2d 322; *Long v. Watts*, 183 N.C. 99, 102, 110 S.E. 765; *First American Bank & Trust Co. v. Ellwein*, 221 N.W. 2d 509, 515-16 (N.D.), cert. denied, 419 U.S. 1026, 95 S.Ct. 505, 42 L.Ed. 2d 301; *Alamo Title Co. v. San Antonio Bar Assn.*, 360 S.W. 2d 814, 817 (Tex. Civ. App.) (application for writ of error refused, no reversible error); see also 46 Am Jur. 2d, Judges, § 89."

170 Conn. at 523-525.

It should also be noted that in a recent decision the United States Court of Appeals for the Eighth Circuit held that mere membership in a state bar association was not cause for disqualification of members of the Court. The case involved a suit for injunctive relief as well as damages based upon escrow account procedures. It was alleged that mortgagors were entitled to interest on funds escrowed by banks for the purpose of taxes and insurance payments. The disqualification issue was dealt with by the Court as follows:

"The grounds alleged by appellants for disqualification of the members of this court are (1) that the members of this court are involved with or are members of, the Minnesota Bar Association and the American Bar Association, both of which were defendants in a separate class action suit brought by the appellants and (2) that the members of this court have a 'unique relationship' with the members of the legal profession and the financial interests in the state of Minnesota and as such cannot render a fair and impartial decision. Such vague allegations of prejudice are insufficient to require disqualification of any member of this court. 28 U.S.C. § 455. See *Wounded Knee Legal Defense/Offense Committee v. F.B.I.*, 507 F.2d 1281, 1285 (8th Cir., 1974)."

Scarrella v. Midwest Federal Savings and Loan, 536 F.2d 1207 at 1209 (8th Cir., 1976) *(per curiam)*, *cert. den.*, 429 U.S. 885 (1976).

Concerning frivolous attacks upon the dignity and integrity of the judiciary, see *Town of East Haven v. Eastern Airlines, Inc., et al.*, 304 F.Supp. 1223 at 1225 (D.Conn. 1969) (Timbers, Chief Judge); previous decision in same case denying motion to disqualify all Connecticut federal judges, 293 F.Supp. 184 (D.Conn. 1968). *See generally, Berger v. United States*, 255 U.S. 22, 33-34 (1921); *Wolfson v. Palmieri*, 396 F.2d 121, 124 (2d Cir., 1968).

CONCLUSION

It is readily apparent that the petition for certiorari is not only without merit, but also frivolous. There is no showing whatsoever of any special or important reason for granting the writs of certiorari in this case, writs which are not a matter of right but instead of sound judicial discretion. Nor has the Court of Appeals rendered a decision in conflict with those of other federal and state appellate courts or has so far departed from the accepted and usual course of judicial proceedings, or has sanctioned such a departure by lower courts as to call for an exercise of the Supreme Court's power of supervision. See Rule 17.1, Rules of the Supreme Court of the United States.

It is therefore respectfully submitted that the petition for writs of certiorari should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Barney Lapp, Attorney for the Respondents, certify that on the 19th day of October, 1980, I served a copy of the foregoing Brief by mailing, United States Mail, Postage Prepaid, to the following:

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